

EAN.14213

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RICHARD UPSHAW

Plaintiff

V.

§

§ CIVIL ACTION NO. 3:21-cv-02077

§ JURY DEMAND

§

§

**(1) KAREN DENISSE LOBATO-
SUAREZ; and
(2) EAN HOLDINGS, INC.**

Defendants

§

§

§

§

**DEFENDANT EAN HOLDINGS, INC.'S
NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant **EAN HOLDINGS, INC.** (hereinafter referred to as "EAN"), in the above entitled and numbered cause, and file this its Notice of Removal of the above-captioned case. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and is authorized by 28 U.S.C. §§ 1441 and 1446.

I. BACKGROUND

1. On November 9, 2020, Plaintiff Richard Upshaw sued Karen Denisse Lobato-Suarez, in the 116th Judicial District Court, Dallas County, Texas, Cause No. DC-20-16690, alleging negligence.
2. On July 28, 2021, Plaintiff Richard Upshaw sued Karen Denisse Lobato-Suarez and EAN Holdings, Inc., in the 116th Judicial District Court, Dallas County, Texas, Cause No. DC-20-16690, alleging negligence against both parties.
3. Plaintiff Richard Upshaw is a citizen of the State of Texas.

4. Defendant EAN Holdings, Inc. is organized in the State of Missouri, with its corporate office and principal place of business in the Saint Louis, Missouri.
5. Defendant Karen Denisse-Lobato-Suarez is a citizen of Mexico.
6. Plaintiff's First Amended Petition, filed contemporaneously herewith, states that the amount of damages sought is over \$250,000 but not more than \$1,000,000.

II. BASIS FOR REMOVAL

7. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because Plaintiff is a citizen of the State of Texas, Defendant EAN is a Missouri corporation, with its principal place of business in the State of Missouri, and Defendant Karen Denisse Lobato-Suarez is a citizen of Mexico. Additionally, the amount in controversy exceeds \$75,000.

A. Complete Diversity Exists.

8. As this Court is aware, for diversity purposes, a person is considered a citizen of the state where that person is domiciled. Plaintiff is a person and domiciled in the State of Texas. Defendant EAN is not domiciled in the State of Texas, but rather was formed in Missouri, with its principle place of business in Saint Louis. Defendant Karen Denisse Lobato-Suarez is a citizen of Mexico.
9. The only managers listed for Defendant EAN. are located in the State of Missouri.
10. Because the Plaintiff, Defendant EAN, and Defendant Karen Denisse Lobato-Suarez, do not share in citizenship in any state, removal is proper on diversity grounds.

11. All Defendants are now, and were at the time of the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332.

B. The Amount in Controversy Exceeds \$75,000.

12. As previously stated, Plaintiff filed his First Amended Petition on July 28, 2021. Plaintiff identified the amount in controversy to be over \$250,000 but not more than \$1,000,000.

13. Accordingly, Plaintiff seeks damages beyond the threshold amount of \$75,000, establishing an amount in controversy of over \$250,000 but not more than \$1,000,000.

14. Accordingly, because this notice of removal has been filed within the time available after Plaintiff provided his First Amended Petition, providing his claim for relief, this removal is proper and timely under 28 U.S.C. § 1446(b)(3).

15. The United States District Court for the Northern District of Texas, Dallas Division, embraces Dallas County, Texas, the place where the state court action was filed and is pending.

16. The live pleadings before the state court are Plaintiff's First Amended Petition, Defendant EAN's Original Answer. No other motions are pending before the state court.

17. All pleadings, process, orders served upon Defendants in the state court action are attached to this Notice as Exhibit "A," as required by 28 U.S.C. § 1446(a).

18. Defendant EAN hereby demands a trial by jury in accordance with the provisions of FED.

R. CIV. P. 38.

19. Defendant Karen Denisse Lobato-Suarez has been served by publication but has never filed an answer.

WHEREFORE, PREMISES CONSIDERED, Defendant EAN Holdings, Inc. respectfully requests that this action be immediately and entirely removed upon filing of this

Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, and for such other and further relief to which it may show itself to be justly entitled in equity or law.

Respectfully submitted,

FEE, SMITH, SHARP & VITULLO, L.L.P

/s/ Daniel M. Karp

DANIEL M. KARP

State Bar No. 24012937

dkarp@feesmith.com

Three Galleria Tower

13155 Noel Road, Suite 1000

Dallas, Texas 75240

972-980-3293

972-934-9200 [Fax]

**ATTORNEYS FOR DEFENDANT
EAN HOLDINGS, INC.**

CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that on this the 31st day of August, 2021, a true and correct copy the foregoing instrument was served on the following counsel of record authorized by Federal Rule of Civil Procedure 5(b)(2):

Via email etagle@dashnerlaw.com and
geoffrey@dashnerlaw.com

Eugene L. Tagle

Geoffrey B. Dashner

THE DASHNER LAW FIRM, P.L.L.C.

4500 Fuller Drive, Suite 209

Irving, Texas 75038

Attorneys for Plaintiff

/s/ Daniel M. Karp

DANIEL M. KARP